A Territorial Law to Control Tobacco Use
What Do You Think?

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Northwest Territories Health and Social Services

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The Risk of Harm from Tobacco is Very High in the NWT.

Tobacco is the only product that people can buy legally that will harm and kill them when it is used exactly as the manufacturers intended. Worldwide, tobacco kills three million people each year. That's one person every ten seconds! [1] Closer to home, about 45,000 Canadians[2] and 40 NWT residents[3] die each year from tobacco use. Annually, many more Canadians and northerners become seriously ill or disabled from tobacco use. The number of people who smoke is declining across southern Canada, falling from 29% of people aged 12 and older in 1995 to 26% in 2000.[4] The NWT has seen no decline in smoking rates during the period of 1994 to 2001, and the risk of harm from tobacco remains very high as almost twice as many adults (42%) smoke as other Canadians.[4,5,6]

The Government of the NWT (GNWT) is responsible for helping northerners protect their health. To do this, it is implementing *Action on Tobacco: A Territorial Strategy on Tobacco Control* to control and reduce tobacco use especially among youth. The vision of *Action on Tobacco* is smoke-free youth, and ultimately a smoke-free NWT:

> "*The reduction and eventually the elimination of tobacco use will be accomplished when we succeed in raising a new generation that is free from addiction to tobacco.*"[7]

Action on Tobacco has four goals:

1. Prevent tobacco use by ensuring that people who do not smoke, never start.
2. Protect people, especially children, from second-hand smoke also known as environmental tobacco smoke.
3. Help and support people who want to stop smoking.
4. Change attitudes about smoking so people see it as an unhealthy and undesirable behaviour.

The GNWT is taking action in support of all four goals. Anti-smoking advertisements, the development of a school curriculum on the harmful effects of tobacco use,[8] and the sponsorship of the territorial *Quit and Win* smoking cessation contest are just some of the *Action on Tobacco* initiatives underway. These actions consider the values, cultures and lifestyles of NWT smokers. *Action on Tobacco* also recognizes the use of tobacco in cultural and spiritual ceremonies of Aboriginal people.

The GNWT knows that no one action or group can solve the complex problem of tobacco use. Controlling and reducing tobacco use takes all levels of government, the private sector, community groups and individuals working together on a number of different actions. The tools that can support and strengthen efforts to deal with tobacco use are:

- policy and legislation,
- health education and promotion,
- research and training,
- cessation supports and programs,

- funding, and
- monitoring and enforcement.

Currently, no legislation and few policies are in place in the NWT to deal with tobacco use.

The GNWT is considering territorial tobacco legislation to complement other initiatives in *Action on Tobacco*. This paper is intended to encourage public and political discussion about legislation to control tobacco use. Feedback on the ideas contained in this paper will help the GNWT to decide whether to go ahead with tobacco control legislation and what should be included in it.

Tobacco Use is a Serious Problem in the NWT, Particularly Among Youth.

Before looking at legislation, it is important to keep in mind who uses tobacco and the problems it causes. The results of two decades of study on tobacco use in the NWT show some alarming facts about smoking, particularly among youth:[9, 10]

- More NWT youth were smoking in 1999 than in 1993.[11, 12]
- In 1999, the smoking rate among NWT children 10 to 12 years old was 6%, 25% for 13-14 year olds, and 48% for teens 15-17 years of age.
- More than one-third (34%) of 12-17 year olds smoke. This is more than double the national smoking rate (16%) among youth of the same age.[12, 13]
- More young women 10-17 years of age (29%) smoke than young men of this age (25%).
- Over half (52%) of young women 15-17 year olds and 44% of males of this age smoke.
- About three-quarters of young Inuit and Dene women 15-17 years of age smoke.
- The majority (56%) of Inuit and First Nations adults smoke.[10]
- Adults and youth who live in the most remote and northern parts of the NWT tend to smoke more than other northerners. All but one of the 13 communities north of Wrigley have smoking rates of over 50% of the adult population. In Paulatuk, 73% of adults smoke, the highest rate of smoking in the NWT. The lowest smoking rate (19%) among adults is in Kakisa.

The reasons for using tobacco are complex. Some of these include:

- peer pressure and influences from family, friends and co-workers;
- relief from loneliness, stress or poverty;
- to deal with anger, frustration, boredom or daily demands and routines;
- a way to avoid eating and gaining weight;
- imitating images shown in tobacco advertisements; and

- family and community acceptance of smoking as a common or normal activity.[9]

The tendency to use tobacco is greater for people who live unhealthy lifestyles or have low education and income.[9]

The earlier people start smoking, the harder it is to quit. About 80% of NWT smokers say they were addicted to tobacco before turning 18.[14] Habits and rituals reinforce tobacco use. The addictive nature of the nicotine in tobacco maintains use.[15]

Tobacco is the Leading Cause of Preventable Disability, Disease and Death.

It is dangerous to smoke tobacco, use smokeless tobacco and breathe environmental tobacco smoke. Northerners know that tobacco is bad for their health but they may not know how bad it really is.

Tobacco contains more than 4,000 chemicals, many of which are poisonous. These chemicals cause a variety of diseases, illnesses and early death for tobacco smokers and people exposed to environmental tobacco smoke.

The Effects of Smoking Tobacco	
On the Smoker (compared to non-smokers)	**On People Exposed to Environmental Tobacco Smoke**
• 2 to 4 times greater risk of heart disease (Smoking is the leading cause of all heart disease.) • 2.5 times more likely to have a stroke. (Smoking causes one-quarter of all strokes.) • Higher risk of chronic obstructive lung disease, chronic bronchitis and emphysema. (Smoking is the cause of 90% of all emphysema cases.) • More risk of diseases of the blood vessels. (Smoking causes about 80% of all deaths due to chronic obstructive pulmonary disease.) • Greater risk of cancer. • More likely to get pneumonia and influenza. • Weaker immune system. • Slower healing bone fractures and other injuries. • Poorer dental health and more periodontal disease. • More frequent and more severe respiratory infections.	*Mothers who smoke during pregnancy* are:[16] • up to three times more likely to miscarry. • at increased rate of delivering stillborn babies. • putting their babies at risk of premature birth, low birth weight, poor prenatal growth and delayed physiological development. *Infants of mothers who smoke* are: • five times more likely to die from Sudden Infant Death Syndrome (SIDS). • likely to develop recurring respiratory problems, asthma and middle ear disease. *Children, youth and adults exposed to environmental tobacco:* • are in contact with a hazardous airborne

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• Accelerated wrinkling and premature aging. (due to less blood flow in small vessels and in the skin.) • Increased heart rate. (due to lower bloodstream capacity to carry oxygen.)	pollutant. • tend to experience similar health risks as smokers.

About 80% of the exposure to environmental tobacco smoke is in the workplace. Working in a smoke-filled environment has the same long-term health effect as smoking ten cigarettes a day.[17] Workers in restaurants, bars and bingo halls without any smoking restrictions, are particularly at risk due to exposure to environmental tobacco smoke. For example, food service workers have a 50% higher rate of lung cancer than the general population.[17]

Tobacco Use Takes a Huge Toll on Our Communities.

The damage caused by tobacco goes far beyond hurting the health of northerners and their families. Tobacco use costs the NWT about $10 million each year as a result of more health care, residential care, fire damage, absenteeism from work and premature death.[18] Employees who smoke cost employers about $2,500 more each year than non-smokers. Higher costs are due to absenteeism, increased health, fire and life insurance premiums, property damage and lost productivity.[19]

Financial costs cannot describe the human costs of losing a loved one, becoming disabled or living with a chronic disease because of tobacco use. Never using tobacco is the most important action that northerners can take to avoid these costs. Quitting smoking is the second most important action – after quitting:

- the risk of heart disease drops by one-half within a year;
- the risk of stroke disappears completely after two to four years;
- the risk of developing lung cancer decreases by one-half after five to fifteen years;[9] and
- the risk of dying from cancer is similar to that of someone who has never smoked.

If 10% of NWT smokers quit, 17% of smoking-related cancers could be prevented. A 20% reduction in smokers could result in 26% fewer cancers.[20]

A total workplace smoking ban would likely lead to savings in health care and lost productivity. Researchers have calculated that the Province of Nova Scotia saved $200 million in avoided health care costs ($50 million) and productivity losses ($150 million) by banning workplace smoking.[17] There are likely to be even more savings when smoking is banned in all public places.

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Laws to Control Tobacco Use are in Place throughout Canada.

The federal *Tobacco Act* is the foundation of tobacco control legislation in Canada. The Act was enacted in 1989 to protect the health of Canadians, particularly young people, from the harmful effects of tobacco.[21] The Act and its regulations control such activities as the promotion of tobacco products, tobacco packaging, sales to minors, and smoking in certain public and work places. Penalties for offences under the *Tobacco Act* can result in maximum fines of $3,000 to $300,000.

Some form of tobacco control legislation exists in each Canadian province. Provincial legislation supports and expands on the federal *Tobacco Act* by imposing similar or additional controls that can be enforced by provincial authorities. Of the three territories, Nunavut is the farthest along in terms of developing tobacco control legislation. The Government of Nunavut is currently consulting with the public on this legislation. In the NWT, the *Tobacco Tax Act* is the only tobacco-related legislation. This Act focuses on applying and collecting tobacco taxes rather than controlling the use of these products.

The federal *Tobacco Act* and provincial tobacco control legislation tend to control tobacco use through six types of tobacco law:

1. **promotion, advertising and sponsorship;**
2. **packaging and labelling;**
3. **point of sale;**
4. **manufacturers and distributors;**
5. **smoking in public and work places; and**
6. **health recovery costs.**

Some of the controls or restrictions provided by these tobacco laws are described here.

Promotion, Advertising and Sponsorship

These restrictions refer to tobacco manufacturers' obligations for health warnings, lifestyle advertising, misleading/false advertising, promotion/ advertising, sponsorship promotions, and trademark promotions. The federal *Tobacco Act* and Quebec's *Tobacco Act* impose restrictions in each of these areas.

Quebec's legislation expands on federal restrictions. For instance, the federal *Tobacco Act* prohibits any form of lifestyle advertising "*that could be construed on reasonable grounds to be appealing to young persons.*" Quebec's Act prohibits any promotion that "*directly or indirectly associates the use of tobacco with a particular lifestyle.*" Few other Canadian provinces have chosen to implement provincial restrictions on tobacco promotions. It is possible that federal restrictions are seen as sufficient to address concerns about tobacco promotion, advertising and sponsorship.

Packaging and Labelling

Packaging and labelling restrictions refer to manufacturers' obligations respecting the number of cigarettes per package, package inserts and warnings, plain packaging, product standards, product testing and reporting, and toxic emissions. Federal legislation prohibits the sale of packages with less than 20 cigarette sticks (also known as 'kiddie packs'). Federal restrictions also require tobacco manufacturers to print one of 16 full-colour warning messages and graphic images depicting the consequences of tobacco use, on the top

half of cigarette packages.[22] These are the strongest cigarette package warnings in the world and have been the subject of a court challenge by three major tobacco companies for over two years. In December 2002, the Quebec Superior Court upheld this law.[23]

The federal *Tobacco Act* also has the most comprehensive tobacco product testing and reporting regulations in the world. The Act and regulations prescribe the test methods, information about emissions, ingredients and hazardous properties, and the way this information must be communicated to the Minister of Health. On reporting requirements, British Columbia's legislation goes even further to require tobacco manufacturers to report all toxic emissions, additives and ingredients in tobacco products sold in the province. British Columbia was the first jurisdiction in the world to require this level of reporting and two years later, the federal government adopted these same requirements.

While federal legislation exists on package inserts, plain packaging, and tobacco products standards, no regulations have yet been approved.[24] Regulations could require manufacturers to place inserts inside tobacco packages with information about the health hazards and effects of tobacco use and emissions. Regulations on plain packaging could require manufacturers to remove all promotion from cigarette packages. Regulations on product standards would prescribe the substances and amount that can be contained in tobacco products and their emissions.

Point of Sale

Provincial point of sale restrictions vary widely throughout Canada. In general, provincial legislation in this area enhances the federal *Tobacco Act* or addresses shortcomings in it. Some examples of provincial point of sale restrictions are:

1. minimum age of purchase;
2. aboriginal youth exemptions;
3. requirements for photo identification;
4. retail signage;
5. sales suspensions; and
6. display of tobacco.

1. Minimum Age of Purchase

Federal law prohibits tobacco sales to persons under the age of 18 years. Four provinces – Nova Scotia, New Brunswick, Ontario and British Columbia – expand on federal legislation by prohibiting tobacco sales to minors under the age of 19 years. In these provinces, the minimum age to purchase alcohol is also 19 years.

2. Aboriginal Youth Exemptions

The federal Tobacco Act contains no exemptions for Aboriginal youth. Ontario's Tobacco Control Act permits a person to give tobacco to "an Aboriginal person who is or appears to be less than 19 years of age if the gift is made for traditional Aboriginal cultural or spiritual purposes." Saskatchewan's Tobacco Control Act has similar exemptions. Ontario and Saskatchewan are the only two Canadian provinces where legislation allows smoking or holding lighted tobacco in public places for traditional Aboriginal culture and spiritual purposes.

3. Requirements for Photo Identification

Federal law and legislation in six provinces require retailers to request specific photo identification when the age of the tobacco purchaser is in doubt. The federal *Tobacco Act* requires a driver's licence, passport, citizenship certificate, permanent resident document, armed forces identification card or any other federal or provincial document that contains the person's photograph, date of birth and signature. Provincial legislation may be more specific on the identification required. Newfoundland requires an identification card or driver's licence issued under the *Highway Traffic Act* or an identification card issued under an equivalent Act by another jurisdiction.

4. Retail Signage

Federal law requires retailers to post signs in English and French stating that the sale of tobacco products to persons under 18 years is prohibited. Under federal legislation, there is no requirement for tobacco retailers to post health warning signs at the point of sale. Seven provinces require retailers to post specific signs aimed at curbing sales to minors or giving health warning messages. Signage required in Prince Edward Island remind the public that it is an offence to purchase tobacco on behalf of or for resale to a person under the age of 18. Six provinces require health specific signage:

- "*Tobacco is addictive and causes lung cancer, emphysema and heart disease. It is against the law to provide tobacco products to persons under 19 years of age.*" (Newfoundland)
- "*Nova Scotia Tobacco Access Act: Tobacco Kills: Tobacco Contains An Addictive Drug & Kills 1,400 Nova Scotians Each Year – More Deaths Than Accidents, Alcohol, Aids, Homicides & Suicides Combined. Nova Scotia Department of Health*" (Nova Scotia)
- "*Tobacco Can Kill You*" accompanied by the following series of rotated health messages – 1. "*Second hand smoke can cause lung cancer in non smokers.*" 2. "*More than 8 out of 10 persons who get lung cancer die within 5 years.*" 3. *Millions of Canadians have quit smoking.*" 4. "*If you keep trying to quit, you can be one of them.*" (New Brunswick)
- "*Under 19? Forget it. It's against the law to sell tobacco to anyone under 19 years of age. Smoking is a danger to your health.*" (Ontario)
- "*Tobacco kills 1 out of every 2 users. Tobacco is highly addictive.*" (British Columbia)
- no signage requirements have been introduced in Quebec although provincial legislation requires the operator to post "*a warning attributable to the Minister concerning the harmful effects of tobacco on health as soon as the warning is provided by the Minister.*"

Government signage seeks to counter tobacco company advertising that promotes social and peer acceptability of smoking; images of smokers as healthy, attractive, independent and athletic; and use of 'lighter' brands for a sense of well-being and harmony with nature.

5. Sales Suspensions

Federal law and legislation in five provinces may suspend or cancel tobacco retail licences for selling cigarettes to minors or for other offences. Under the *Tobacco Tax Act*, the GNWT may also suspend or cancel licences to sell tobacco.

6. Display of Tobacco

Manitoba and Saskatchewan have recently passed legislation to become the only two jurisdictions in the country that require tobacco products to be removed from public view at the point of sale. Tobacco

retailers are required to use cabinets, under-counter drawers, sliding doors or other methods to keep these products out of view.

The federal *Tobacco Act* does not refer to the responsibilities of minors who possess or use tobacco products. Alberta's proposed *Prevention of Youth Tobacco Use Act* would be the first legislation in Canada to set out limits on tobacco possession and use by minors. The proposed Act states that "*no person under the age of 18 may possess or smoke or otherwise consume tobacco products in a public place.*"

The federal *Tobacco Act* does not specify the type of outlets that can sell tobacco. Five provinces, mainly in eastern Canada, have prohibited tobacco sales in pharmacies. Quebec and Saskatchewan prohibit tobacco sales in schools. Federal law does not permit advertising of tobacco products in telephone books or on the Internet; however, Quebec has recognized the potential for sales through the mail and the Internet, and has addressed this by prohibiting the sale of tobacco *"except in the physical presence of the vendor and the purchaser."*

The federal *Tobacco Act* states that "*no person shall furnish or permit the furnishing of a tobacco product by means of a device that dispenses tobacco products except where the device is in a place to which the public does not reasonably have access, or a bar, tavern or beverage room and has a prescribed security mechanism.*" Laws in Nova Scotia and Ontario are more restrictive with respect to vending machines. Ontario prohibits anyone from dispensing cigarettes from a vending machine. Nova Scotia prohibits cigarette vending machines "*on any premises or in any place accessible to the public.*" The NWT *Tobacco Tax Act* licences vendors to sell tobacco including through vending machines. Tobacco vending machines are generally found in bars in the NWT.

Manufacturers and Distributors

Restrictions on tobacco manufacturers and distributors refer to licensing, fees, price controls and reporting requirements on health hazards, ingredients, marketing information, promotional activities, research and sales volumes. Federal legislation requires reporting of sales volume, promotional activities, marketing, ingredients and research.

While federal legislation is not comprehensive in these areas, only British Columbia, Ontario and Quebec have adopted restrictions on manufacturers and distributors. The British Columbia government requires rigorous reporting on tobacco ingredients, additives and toxic emissions. Quebec prohibits the reduction of the retail price of tobacco on the basis of quantity, rather than "*as part of regular marketing operations*". Quebec also requires reporting on ingredients, marketing and sales volumes. Under its *Tobacco Control Act*, Ontario requires manufacturers to report to the Minister of Health on health hazards but the content of these reports are not specified in the regulation. British Columbia has also developed legislation respecting licensing, fees and price controls but these laws have not yet been approved.[24, 25]

Smoking in Public and Work Places

Laws to prohibit or restrict smoking in public and work places are common throughout Canada. They exist at the federal, provincial and municipal government levels. Federal legislation restricts or prohibits smoking in areas under its authority (e.g. federal government workplaces and public transportation such as airplanes). Legislation prohibiting or restricting tobacco use in public places, enclosed public places and/or work places exists in six provinces. In British Columbia and Newfoundland/Labrador, public places and work places are treated the same and smoking is prohibited. In general, legislation restricting smoking tends to:

- prohibit tobacco use in public spaces such as schools, retail premises, public transportation including taxis and elevators, childcare facilities, and community recreation facilities;
- allow smoking in designated (often enclosed) areas with prescribed size and ventilation, if it is allowed at all;
- levy a fine that increases in amount for offences when the offender is an employer or operator of a public place; and
- rely on inspectors appointed by the Minister responsible for enforcing smoking prohibitions.

To improve the enforcement of smoking restrictions, Newfoundland/Labrador and Ontario protect informants (whistleblowers). Newfoundland's *Smoke-Free Environment* Act states that an employer or person acting on behalf of an employer shall not:

- *dismiss or threaten to dismiss an employee;*
- *discipline or suspend an employee or threaten to do so*;
- *impose a penalty upon an employee*; or
- *intimidate or coerce an employee who has acted in accordance with or sought to enforce the Act.*

Most Canadian provinces and territories also have legislation to enable communities to pass by-laws to control smoking in public places. In most provinces, a more restrictive community smoking by-law would prevail in the event of a conflict with provincial or territorial tobacco control legislation.

Provincial legislation prohibiting and restricting smoking varies widely in intent and detail particularly with respect to employer responsibilities, exemptions, and exclusions. British Columbia controls smoking under the Occupational Health and Safety Regulation, and is the only jurisdiction in Canada to use worker health and safety regulation for this purpose. The Regulation states that "*the employer must control the exposure of workers at any workplace to environmental tobacco smoke by prohibiting smoking in the workplace or restricting smoking to designated smoking areas or by other equally effective means.*"[26]

Health Recovery Costs

The federal *Tobacco Act* refers to five types of tobacco control law. Recently, British Columbia and Newfoundland/Labrador introduced a sixth type of tobacco control legislation to recover damages/costs to the health care system resulting from tobacco use. These new laws enable these two provincial governments to sue Canadian tobacco manufacturers for the costs of treating tobacco-related illnesses. The British Columbia government has also passed legislation to require tobacco manufacturers and distributors to contribute to the costs of implementing tobacco use reduction strategies.

The NWT Does Not Have Territory-Wide Laws to Control Tobacco Use.

The NWT relies mainly on the federal *Tobacco Act* to control tobacco use in the territory. The GNWT uses the tobacco-related legislation that it does have to reinforce federal laws and support *Action on Tobacco* initiatives. For example, any retailer found guilty of selling tobacco to minors under the federal *Tobacco Act* may not be issued a licence to sell tobacco under the NWT *Tobacco Tax Act.*

The federal *Tobacco Act* provides some legislative support to *Action on Tobacco* but lacks regulation in a number of areas necessary to control and reduce tobacco use in the NWT. In addition to gaps in legislation, the federal *Tobacco Act* is irregularly enforced in the NWT: currently, the federal *Tobacco Act* is enforced by non-resident officials who make infrequent visits to some NWT communities.[27] Canadian provinces have found that provincial tobacco control legislation enforced by provincial authorities with the power and staff to consistently monitor compliance with the law is an effective way to control tobacco use. For these reasons, it may be desirable to introduce territorial tobacco control legislation that is designed to support *Action on Tobacco* goals and initiatives, and is regularly and consistently enforced by territorial authorities.

Community by-laws are another way that tobacco use is controlled in Canada. In the NWT, the authority to make smoking by-laws is granted to community councils under the *Charter Communities Act, Cities, Towns and Villages Act* and the *Hamlets Act*. Only four NWT municipalities currently have smoking by-laws.[28] The smoking by-law in the City of Yellowknife is an example of these by-laws. Enacted on September 30, 1999, the Yellowknife smoking by-law affects 44% of the NWT population. It is designed to reduce exposure particularly among children, to environmental tobacco smoke by prohibiting smoking in all indoor public places except:

- licenced cocktail lounges or other buildings where the entry of persons under 19 years of age is prohibited, and
- places of employment that are not generally accessible to the public and off-duty taxi cabs.

The by-law provides for phased in prohibition of smoking in restaurants, licenced dining rooms, clubs, private recreation facilities and canteens. As of January 1, 2002, 75% of the total seating area in these facilities were required to be non-smoking and by April 1, 2003, a total ban of smoking will apply in these facilities. Yellowknife's City Council is also examining opportunities to ban smoking in other public areas in the community.

Smoking by-laws create a patchwork of laws that ban or restrict smoking in certain places within a community. Relying on municipal by-laws alone will not give all residents the same level of protection from tobacco. The extent and success of community smoking by-laws depends on the leadership of local politicians and activists to gain public support to deal with the hazards of tobacco use. This is a shortcoming of community by-laws because smoking may not be perceived as a serious problem in all NWT communities, particularly when compared to such issues as unemployment, alcohol abuse or family violence. NWT-wide legislation that controls smoking in certain places in northern communities may make it easier for local councils and citizens groups to take action on tobacco use. Territorial legislation would also ensure that the health of all northerners – regardless of where they live – is protected from the harm caused by tobacco use. As in other jurisdictions, it would make sense to permit communities to have by-laws that would be more restrictive than territorial legislation.

The GNWT is in the process of negotiating self-government agreements with a number of Aboriginal groups. Three self-government agreements currently being developed provide the framework for law making authority in some First Nations and Inuvialuit communities and on certain lands.[29] These agreements may provide other opportunities to control tobacco use as they recognize community governments and their authority to pass laws similar to those of municipal governments in the NWT. This means that communities under self-government agreements could pass laws to protect the health, safety and welfare of people within community boundaries including laws to control the use of tobacco.

Efforts by Aboriginal governments to control tobacco use will be supported by the legislation of other levels of government. In particular, the federal *Tobacco Act* will continue to apply in those communities and lands identified in self-government agreements, and will prevail in the case of a conflict with self-government legislation. In most cases, territorial tobacco control legislation would also apply to Aboriginal lands and communities under self-government agreements because the GNWT will retain the authority to legislate to protect public health throughout the NWT.

Legislation Helps to Control Tobacco Use.

Tobacco use in Canada declined between the 1960s-1990s. This was mainly due to the range of complementary measures implemented by all levels of government to control tobacco use. Tobacco control legislation was one of these measures. After three decades, some important lessons have been learned about tobacco control legislation.

- Legislation alone will not control the use of tobacco products. The success of laws restricting use of and access to tobacco depends on consistent enforcement/compliance checking and community awareness of the problems and prevalence of smoking, particularly among youth.[30]

- Regardless of the focus of tobacco control legislation, community and political support at all levels are essential for effective enforcement.[31]

- Legislation that supports young people to be tobacco-free is more effective than that which penalizes youth for using tobacco.[32] Youth are more responsive to actions and messages that are relevant to them (and that demonstrate an interest in their well being) than laws that tell them what they cannot do or laws that punish them. Research also suggests that efforts to penalize youth for using tobacco may in fact drive them to smoke.

- Legislation requiring smoke-free public and work places is a powerful and effective way to reduce exposure to environmental tobacco smoke, lower tobacco use and communicate that smoking is <u>not</u> an acceptable behaviour. Research in California in the 1990s found that smokers who work in a smoke-free environment are more likely to report an effort to quit.[33] Higher than national average quit rates and a large decrease in the number of cigarettes smoked were also recorded for workers after smoking restrictions were applied at Health and Welfare Canada in 1986.

- The prevalence of tobacco use among youth is also directly affected by legislation that bans smoking in public places. "*In California, where a complete ban on workplace smoking including restaurants and bars, is part of a comprehensive tobacco control strategy, youth smoking rates have fallen by 6%.*" [33] Legislation prohibiting or restricting smoking in public and work places has contributed to savings in health costs, reduced employer costs and increased worker productivity.

- Legislation that requires high prices for tobacco products deters use, particularly among youth.[34, 35] Research studies have estimated that a 10% increase in tobacco prices results in an overall decrease in tobacco sales of 4% to 6%. These decreases may be even greater among youth who are more sensitive to price increases than other consumers. For these reasons, the greater the increase in tobacco prices, the greater the expected decrease in tobacco sales among youth.

- Legislation restricting or prohibiting smoking in bars and restaurants does not negatively impact on sales or employment in the long term. These impacts have been documented in British Columbia and California. Several studies have also found that smoking restrictions actually increase sales.[36, 37]

- Legislation prohibiting rather than restricting smoking under certain conditions or in specific areas provides optimum public protection from environmental tobacco smoke.

The experiences of other jurisdictions show that an annual investment of $5 - $12 per person is required to implement tobacco control initiatives.[38] As noted previously, British Columbia requires tobacco manufacturers and distributors to share these costs. The cost of implementing tobacco control and reduction measures may be influenced by the:

- attitudes and awareness of problems caused by tobacco;

- extent of tobacco use and the distribution of tobacco users;

- range and extent of control and reduction activities; and

- personnel available to implement tobacco control initiatives.

The cost of enforcing tobacco control legislation is highest in the first two years after laws have been introduced.[31] After this initial period, costs tend to decline as the public becomes aware of new laws. Jurisdictions that combine enforcement responsibilities with existing infrastructure and functions have achieved significant cost efficiencies. Those jurisdictions that give approved officials the authority to ticket, fine or withdraw privileges for tobacco offences find that enforcement is cheaper than in those that take people to court.

The implementation of tobacco control legislation in the NWT would likely be cost-effective because:

- the GNWT maintains public health infrastructure and staff in every region that could be involved in tobacco control enforcement. In particular, environmental health officers employed by regional health and social services authorities to enforce the NWT *Public Health Act* could (with some additional resources) take on tobacco control enforcement duties.

- under existing health and tobacco legislation, the GNWT tends to follow an administrative rather than a legal approach to imposing penalties for offences.

The GNWT would be required to invest about $9 per person to enforce tobacco control legislation in the NWT.[39] Some of these costs may be offset by contributions from the Federal Government to reduce tobacco use. Estimates suggest that for every $1 invested in a comprehensive tobacco control strategy, $3.62 in medical costs are saved.[33]

What Would NWT Tobacco Control Legislation Look Like?

The goals of NWT tobacco control legislation would likely mirror those of the *Action on Tobacco: A Territorial Strategy on Tobacco Control*:

1. to prevent tobacco use;
2. to protect people from environmental tobacco smoke;
3. to help and support people to stop smoking; and
4. to change attitudes so people see smoking as an unhealthy and undesirable behaviour.

Territorial tobacco control legislation would target children and youth because:

- tobacco use among NWT youth is a serious problem;
- tobacco use places children and youth at particular risk; and
- the vision of *Action on Tobacco* is *a generation free from addiction to tobacco*.

Developing legislation can be a time-consuming process. It is important that it be designed with success in mind. The experience of others shows that tobacco control legislation can be successful if it:

- is built on broad public and political consensus that laws are needed to help people reduce and control tobacco use and the harm it causes;
- complements existing laws and works with other tobacco control initiatives such as anti-smoking education and promotional activities;
- has adequate resources to enable regular and consistent enforcement throughout the jurisdiction; and
- is simple and easy to enforce.

If tobacco control legislation is introduced in the NWT, it should be developed with these four considerations in mind. We would also have an opportunity to assume that territorial tobacco control legislation would be similar to other provincial legislation. It is reasonable to address gaps in or strengthen tobacco legislation developed by other jurisdictions. **For these reasons, territorial tobacco control legislation would likely focus on two of the six types of legislation presented in this paper**:

- **Point of sales restrictions to help prevent tobacco use, particularly among youth.**

  Addiction to and continued use of tobacco products begins during the teen years. Few people start smoking after their teen years. The best approach to preventing tobacco use, addiction and consequent health problems is to stop young people from starting to smoke.[30] Several Canadian provinces have enacted provincial legislation to control access to tobacco by youth. Provincial restrictions have strengthened and expanded on federal point of sale restrictions.

- **Restrictions on smoking in public and work places to help prevent tobacco use, protect people from environmental tobacco smoke, help people to stop smoking, and change attitudes about smoking.**

  This type of law is common across Canada and exists on a piece-meal basis in the NWT. As a result, there are inequities in the protection afforded to northerners. The research shows that smoke-free public and work places discourage and reduce tobacco use, and reduce or eliminate exposure to environmental tobacco smoke.

At this time, it is doubtful that territorial legislation would consider the four other types of tobacco control laws:

- **Restrictions on promotion, advertising and sponsorship.**

  The federal *Tobacco Act* has extensive and adequate restrictions on promotion, advertising and sponsorship activities. Further, there is limited tobacco company promotional activity in the NWT because of the small population base.

- **Restrictions on packaging/labelling.**

  No tobacco products are currently manufactured in or specifically for the NWT where the market place is small. As such, there is little benefit to reinforcing federal *Tobacco Act* legislation in these areas.

- **Restrictions on manufacturers/distributors**

  No tobacco products are currently manufactured in or specifically for the NWT where the market place is small. As such, there is little benefit to reinforcing federal *Tobacco Act* legislation in these areas.

- **Health care cost recovery.**

  A jurisdiction as small as the NWT does not have the resources to take international tobacco companies to court. The NWT will watch and review British Columbia and Newfoundland's successes in recovering health care costs from tobacco companies before proceeding with this type of legislation.

Price increases affect the smoking patterns of all smokers but youth significantly more than adults. In provinces where the price of tobacco is high, smokers consume less tobacco than in those provinces with lower tobacco prices.[40] Cost equity among all types of tobacco products (e.g. similar pricing for cigarette sticks as loose tobacco) further influences smoking patterns.[41] Currently, loose tobacco is taxed at a lower rate than cigarettes under the NWT *Tobacco Tax Act*. It would be appropriate to consider legal mechanisms to ban volume discounts, restrict other price incentives for tobacco products, increase the price of all tobacco and ensure that all forms of tobacco products are taxed at the same rate.

What Restrictions on Point of Sales and Smoking in Public and Work Places Should be Considered?

Point of Sale Restrictions

"It is illegal to sell cigarettes to youth under 18 years of age, yet only 33% of (NWT) youth aged 15-17 were asked their age when they attempted to buy tobacco."[12]

NWT tobacco control legislation could:

1. establish a minimum (legal) age of purchase;
2. require photo identification issued by the GNWT;
3. ban or restrict tobacco sales to certain outlets;
4. require face-to-face sales;
5. permit only government signage at the point-of-sale; and
6. ban the visible display of tobacco products and tobacco promotions.

1. Establish A Minimum (Legal) Age of Purchase.

The legal age to purchase tobacco and alcohol in four provinces is 19. When the legal age is 19, there is a higher rate of refusal among vendors than where the legal age is 18. [30] In the NWT, individuals can purchase tobacco at the age of 18 (under federal law) and alcohol at the age of 19. It may be appropriate to also establish the age of 19 as the legal age to purchase tobacco in the NWT.

2. Require Photo Identification Issued by the GNWT.

Research has shown that there is a strong and direct relationship between retailers asking for identification and their compliance with tobacco control laws. [30] The federal *Tobacco Act* allows several pieces of photo identification to be used in cases where the age of the tobacco purchaser is in doubt. A general identification card issued by the GNWT to all NWT residents would not be easily replicated or shared by youth seeking to acquire tobacco products.

3. Ban or Restrict Tobacco Sales to Certain Outlets.

The federal *Tobacco Act* does not specify the type of outlet that can sell tobacco. NWT tobacco control legislation could ban sales in pharmacies and facilities providing education, sport, recreation, health care, and childcare. This would reduce access to tobacco as well as inconsistencies in messages about tobacco use and healthy living promoted by these agencies and institutions.

4. Require Face-To-Face Sales.

A requirement for face-to-face transactions between the buyer and the seller (as is the case in Quebec) would permit the seller to verify the age of the customer. This requirement would effectively ban tobacco sales through vending machines, mail-order and the Internet. Face-to-face transactions would also create opportunities to educate retailers, and reduce the burden of enforcement. [30]

5. Permit Only Government Signage at the Point-Of-Sale.

The magnitude of hazards associated with tobacco use and the risks of addiction are not well known, particularly among youth. [9, 32] In the NWT, purchases of tobacco are made without any signage or information to inform about the harmful effects of these products, or to differentiate tobacco from other consumer products. Tobacco company advertising contributes to misinformation and confusion about the risks of tobacco use. Permitting only government signage at the point of sale would help to address these problems. Signage that is non-threatening, that sends a clear strong message – particularly to youth – about the law, and that provides education on health effects and addiction is most effective. [30]

6. Ban the Visible Display of Tobacco Products and Tobacco Promotions.[42]

Keeping tobacco out of view is one way of communicating to young people that tobacco use is not a normal behaviour. In the NWT, tobacco products are highly visible and displayed in a manner that encourages access, promotes use and contributes to the social acceptability of tobacco use. Tobacco products and promotions that are not visible to any consumer (e.g. stored under the counter except in the case of tobacco specialty stores) would reduce social acceptability[43] of these products and support enforcement of access restrictions, because individuals would be required to request tobacco from the retailer.[44] This would create opportunities for retailers to check age identification and provide additional information on the risks of tobacco.

Enforcement Considerations

Point of sale restrictions must be regularly and consistently enforced to be effective. This requires a well-organized and consistently enforced program and a strong commitment to enforcing legislation. [31] Compliance in excess of 80% is required to impact on youth smoking rates. [32]

To achieve high compliance rates, retailers must be subject to a broader range of consistent, jurisdiction-wide enforcement measures (e.g. regular/twice per year compliance checks by adolescent test shoppers, graduated fines, licences to sell tobacco products revoked for a period of time, negative publicity/advertising of retail violators, positive advertising of compliance). [30] Compliance to point of sales restrictions is also supported by retailer education and partnerships with the police. [31] A retail registry developed from information maintained by the GNWT to enforce the *Tobacco Tax Act* would also assist enforcement efforts.

The costs of consistent, jurisdiction-wide enforcement can be high. Research has shown that centralized enforcement ensures that adequate priority and resources are allocated to this function. [31] Cost-efficient ways to consistently enforce tobacco control laws are more likely to be achieved at a local/regional level, particularly if enforcement functions are added to existing positions (e.g. officers of health authorities or municipalities).

Restrictions on Smoking in Public and Work Places

NWT tobacco control legislation could ban smoking in all public and work places and protect informants ('whistleblowers').

1. Ban Smoking in all Public and Work Places.[45]

The NWT was the first jurisdiction to implement smoke-free government workplaces in 1987. Currently, an estimated 66% of NWT-employed smokers work in occupations where there are smoking restrictions. In small NWT communities this number falls to 56%. [6] Some municipalities in the NWT are moving to smoke-free public and work places. The patchwork of federal, territorial, community and work place regulations that exist to restrict smoking in public and/or work places in the NWT do not universally or adequately protect all northerners from the known hazards of tobacco smoke.

Governments and employers are legally responsible for ensuring a safe environment that does not expose users to known health hazards. Worldwide, a growing number of court cases have penalized employers for not providing a safe work environment. Legislation that bans smoking in public and work places is the most effective way to eliminate exposure to environmental tobacco smoke. It is

also a more effective approach to smoking cessation than other efforts directed at smokers. [17, 44] Smoke-free environments:

- discourage people from starting to smoke;
- raise questions about the social acceptability of smoking;
- educate people about the unacceptability of smoking;
- reduce or eliminate exposure to a hazardous substance and subsequent health risks;
- lower health care costs; and
- change attitudes about tobacco use, particularly among young people. [17, 44]

Territorial legislation on smoking in public and work places would also have these effects.

2. Protect Informants ('Whistleblowers').

The participation and support of users (including employees and members of the public) is necessary to benefit from a ban on smoking in public and work places. Members of the general public and other users may be reluctant initially to support a ban on smoking because they don't understand the hazards, fear personal consequences or fear losing their job. [17, 44] Newfoundland's *Smoke-Free Environment* Act is a good example of the protection that NWT whistleblowers should have in order to reduce these fears.

User education and discussion, and the guarantee of confidentiality, supports the success of this legislation. NWT legislation requiring protection for informants would include the requirements for education and confidentiality. It is expected that whistleblowers would be able use a toll-free, confidential telephone or electronic service to report offences to territorial legislation on smoking in public and work places.

Enforcement Considerations

Because almost half of the adult population in the NWT smokes, opposition to a smoking ban in public and work places may be significant. This may diminish the resolve of leaders and other activists to enact or regulate legislation of this nature. Substantial public discussion and education is required before and after legislation is enacted to ban smoking in public and work places.

Existing policies on smoking in public and work places would likely not be needed in the event of NWT legislation banning smoking. Territorial legislation would also support the enforcement of smoking by-laws by community staff. As is the case elsewhere in Canada, more restrictive community by-laws would prevail over less restrictive territorial legislation.

Is it Time for Tobacco Control Legislation in the NWT?

In many NWT communities, people smoke because it is a common and socially accepted practice. [9] More of our residents smoke, and begin smoking at an earlier age than in the rest of Canada. Consequently, tobacco use in the NWT has become a very serious public health concern. In light of the financial and social costs associated with the use of tobacco, legislation appears to be a reasonable tool to help to reduce these costs.

It is clear from the research that a comprehensive approach to tobacco control – combining legislation with other efforts such as health education and promotion – is the best way to accomplish the goal of reducing tobacco use. The GNWT is committed to reducing tobacco use through more public awareness campaigns and by helping those who want to quit. The GNWT also realizes that to be successful in achieving the vision of a smoke-free generation, we must have the support and acceptance of a large number of residents – smokers and non-smokers alike.

The GNWT is committed to consult with residents and other levels of governments including Aboriginal governments before proceeding with territorial-wide legislation. This discussion paper and the attached feedback form is the first step in this consultation process. Pending the feedback on this paper, the GNWT will hold further consultations with representatives of stakeholders and Aboriginal governments within the next six months. With respect to Aboriginal governments, the GNWT wants to ensure that the traditional use of tobacco is considered and that territorial-wide tobacco legislation respects Aboriginal government jurisdiction.

What do you think?

- Is the NWT ready for territory-wide tobacco legislation?
- Should smoking be banned from public places or only those that allow children?
- Should smoking be banned from the workplace?
- If we proceed, what elements would you like to see included in NWT tobacco control legislation?
- If you do not agree with the idea of tobacco control legislation, why not?

These are some of the questions the GNWT would like you to consider when you provide feedback on the idea of territorial tobacco control legislation.

We want to hear from you. Use the feedback form (on following pages) to provide your comments in writing. **Send by March 31, 2003, comments to:**

Mr. Doug Ritchie
Manager, Policy and Legislation
Department of Health and Social Services
Box 1320
YELLOWKNIFE, NT X1A 2L9

Phone: 867-920-3275

Fax: 867-873-0484

Email: Doug_Ritchie@gov.nt.ca.

You can also provide your feedback online at www.hlthss.gov.nt.ca, by March 31, 2003.

NWT Tobacco Control Legislation – Feedback Form
We would like to hear from you by March 31, 2003!

1. Do you agree with the idea of territorial tobacco control legislation?

☐ Yes ☐ No

If no, why not?

_____

_____

_____

2. Do you support the following bans:

a) A general ban on smoking in all places used by the public?

☐ Yes ☐ No

Comments: _____

b) A ban on smoking in all public places where children are allowed?

☐ Yes ☐ No

Comments: _____

c) A ban on smoking in all workplaces?

☐ Yes ☐ No

Comments: _____

3. Do you support an increase in the legal age from 18 to 19 to buy tobacco?

☐ Yes ☐ No

Comments: _____

4. Do you support the following restrictions relating to the point of sale:

a) Ban or restrict tobacco sales to certain kinds of outlets?

☐ Yes ☐ No

Comments: _____

b) Require face-to-face tobacco sales (ie. no vending machines)?

☐ Yes ☐ No

Comments: _____

c) Permit only government signs about tobacco?

☐ Yes ☐ No

Comments: _____

d) Ban the public display of tobacco products and promotions?

☐ Yes ☐ No

Comments: _____

5. Do you have any other comments?

_____

_____

_____

_____

_____

_____

_____

Please tell us if you are (check all that apply):

☐ under 18
☐ a retailer
☐ an owner of a service industry business (restaurant, lounge etc)
☐ an interested member of the public
☐ a health or medical professional
☐ a teacher, educator or youth worker
☐ an elected leader (such as a Member of the Legislative Assembly, Chief, Mayor, Councillor)

Please complete the following (only if you want to):

Name: _____

Organization: _____

Mailing address: _____

Phone: _____ E-mail: _____

Send your response by mail or fax by March 31, 2003 to:

Mr. Doug Ritchie
Department of Health and Social Services
Policy, Legislation and Communications
Box 1320
YELLOWKNIFE, NT X1A 2Y2
Fax: 867-873-0484

You can also complete the form and submit online at: http://www.hlthss.gov.nt.ca

Thank you for taking the time to let us know what you think!

Endnotes

1 World Health Organization

2 Health Canada. About 21% of all deaths in Canada.

3 25% of all deaths in the NWT. Interdepartmental Tobacco Working Group, Government of the NWT. March 2001. **New Directions for Tobacco Control in the Northwest Territories – A Territorial Strategy.** (draft)

4 Statistics Canada. May 2002. **2000-2001 Canadian Community Health Survey**

5 Statistics Canada. 1999. **National Population Health Survey**.

6 Bureau of Statistics, Government of the NWT. 1999. **NWT Labour Force Survey**. Adults are persons 17 or more years of age. Comparisons between Canada and NWT should be made with some caution as questions regarding smoking behaviour in the Labour Force Survey and Canadian Tobbaco Use Monitoring Survey were somewhat different.

7 Health and Social Services, Government of the NWT. 2001. **Action on Tobacco: The Territorial Strategy on Tobacco Control**.

8 Information on tobacco use and the effects will be a unit within the NWT school health curriculum.

9 Health and Social Services, Government of the NWT. 2001. **Smoke Alarm: A Summary Report on Smoking in the Northwest Territories**.

10 Health and Social Services, Government of the NWT. 2001. **Facts About Smoking in the Northwest Territories**. These statistics do not include the use of smokeless tobacco (chewing tobacco and snuff).

11 Government of the NWT. **1993 NWT School Tobacco Use Survey**.

12 Government of the NWT. **1999 NWT School Tobacco Use Survey**.

13 Statistics Canada. **1996 National Population Health Survey**.

14 Bureau of Statistics, Government of the NWT. **1996 NWT Alcohol and Drug Survey**.

15 Nicotine imitates an important chemical in the brain. With continued tobacco use, the brain becomes dependent on nicotine because it is producing less of its own chemical.

16 About 43% of NWT women in their child bearing years smoke and many continue to smoke during pregnancy.

17 Colman, Ronald. September 2001. **The Economic Impact of Smoke-Free Workplaces: An Assessment for Nova Scotia**. Report prepared for the Tobacco Control Unit, Nova Scotia Department of Health

18 Research and Analysis Unit, Department of Health and Social Services, 1999.

19 Labour Canada

20 Department of Health and Social Services, GNWT. 2000. "Smoking in the Northwest Territories: Preliminary Results from the 1999 Labour Force Survey." **EpiNorth**, Spring 2002, Volume 12: 6-8

21 The 1989 federal tobacco control legislation, the *Tobacco Products Control Act,* has evolved and changed to become the *Tobacco Act.*

22 Canadian Council for Tobacco Control. April 1, 2001. **Summary Analysis of Canadian Tobacco Laws**.

23 J.T.I MacDonald Corp. versus Canada (Attorney General), 2002 gccs 16431.

24 Tobacco Control Program, Health Canada. April 2002. **Canadian Tobacco Laws Cross-Referenced**.

25 Price control legislation may be repealed.

26 In May 2002, British Columbia amended the Occupational Health and Safety Regulation to exempt bar, bingo hall, cocktail lounge, restaurant, gambling casino, nightclub or pub, provided that the employer provides a separate smoking place.

27 Since the federal Act was implemented in 1989, Health Canada has reduced its priority on enforcement including access restrictions targeted at youth. Instead, Health Canada has tended to seek a balance in its financial support to a wide range of tobacco reduction

initiatives. Health Canada has recognized that less priority on enforcement has weakened the effectiveness of federal legislation. Health Canada plans to increase enforcement in an effort to curtail the continued high use of tobacco products among youth. It is doubtful that adequate resources would be available to provide more regular and consistent enforcement of the federal *Tobacco Act* in all NWT communities.

[28] Yellowknife, Hay River, Fort Liard and Fort Simpson. More municipalities may have non-smoking policies and some of these may be written down. Residents of Fort Smith are currently circulating a citizen's petition calling on the Town to enact a by-law prohibiting smoking in restaurants.

[29] Gwich'in and Inuvialuit Self-Government Agreement in Principle, the Tli Cho Self-Government Agreement and the Deline First Nation Government Agreement.

[30] Canadian Cancer Society.1998. **Enhancing the Effectiveness of Access Laws to Reduce Tobacco Sales to Minors**.

[31] Goss Gilroy Inc. 1997. **Evaluation of the Enforcement Program for Federal Tobacco Legislation**. Office of Tobacco Control, Health Canada.

[32] Ministerial Advisory Council on Tobacco Control. 2002. **Challenging Conventional Wisdom on Youth Access to Tobacco: Redefining Youth Access Opportunities**.

[33] Tobacco Control Section, California Department of Health Services. August 2000. **Tobacco Control Update**.

[34] Ontario Ministry of Health. 1997. **Ontario Tobacco Strategy** (Update).

[35] Advisory Committee on Population Health Working Group on Tobacco Control. 2001. **Moving Forward – The 2001 Federal Provincial Territorial Progress Report on Tobacco Control**.

[36] Pacific Analytics, 2001. **The Economic Impact of the Proposed Amendment to the ETS Regulations**. prepared for the Workers Compensation Board of British Columbia.

[37] Warner, Kenneth. 2000. "The economics of tobacco: myths and realities." In **Tobacco Control** Volume 9: 78-79

[38] Health and Social Services, Government of Nunavut. 2002. **Legislative Proposal: Nunavut Tobacco Control Act**.

[39] Annual costs are based on one additional environmental health officer in each of the north and south NWT ($200,000); travel costs ($50,000); and awareness and promotion costs ($100,000). Per capita costs are based on 2001 Census estimates of the NWT population of 37,360. It is noted that Census data for the NWT may underestimate the population. Should this be the case, per capita investment may be a low as $7-$8.

[40] Health Canada. 2001. **Canadian Tobacco Use Monitoring Survey – Annual Results**.

[41] Canadian Cancer Society. 1999. Surveying the Damage, Cut-Rate Tobacco Products and Public Health in the 1990s.

[42] Across Canada restrictions of this type may also be described as a restrictions on promotion, advertising and sponsorship.

[43] Special Committee on Tobacco Control, Legislative Assembly of Saskatchewan. May 2000. **First Report**.

[44] Pan American Health Organization. May 2002. **Developing Legislation for Tobacco Control – Templates and Guidelines**.

[45] Public places would include medical, personal care, childcare, educational, sporting and recreational facilities, government buildings, retail and public service centres. Work places would include any enclosed building or structure where employees work.